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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,223	04/08/2004	Paul T. Van Gompel	659-2246	9394
7590	12/07/2005		EXAMINER	
Andrew D. Stover BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/821,223	Applicant(s) VAN GOMPEL, PAUL T.	
	Examiner Melanie J. Hand	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/12/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for priority as a divisional of Application No. 09/954,444 filed on September 14, 2001, issued as U.S. Patent No. 6,743,321.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 12, 2004 was filed after the mailing date of the application on April 6, 2004. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahr (U.S. Patent No. 4,826,499) in view of Kozak (U.S. Patent No. 4,036,233).

With respect to **Claims 1,2,3,5,7,8,15,16,19**: Ahr teaches a diaper comprising a front and rear panel with front and rear waist regions 30 and 32, respectively, both panels having side edges 25, and crotch region 34 connecting said front and rear waist regions. ('499, Col. 8, lines 30-32, 37-40) Ahr teaches fastening means 44 affixed to elastic members 42 which extend from said side edges 25 in said rear waist region 32 and which are bonded to topsheet 55 and backsheet 50. ('499, Col. 6, lines 67,68, Col. 7, line 1) Ahr teaches that the fastening means 44 are Velcro fasteners and therefore are refastenable and contain mating hook and loop portions disposed on the front waist region 30 of backsheet 50. ('499, Col. 7, line 68, Col. 8, lines 1,2)

Ahr does not teach that elastic members 42 extend from the side edges 25 of said front waist region 30. Kozak teaches a diaper with an extensible waistband that is adjustable throughout the entire front and rear portions of said waistband via openings 28. Kozak teaches that this provides a better fit to the wearer. Since Kozak also teaches extensible portions in the rear waistband portion, Examiner is regarding the teaching of Kozak as an alternate method of providing extension members to that taught by Ahr. In the instant case substitution of equivalent methods requires no express motivation, as long as the prior art recognizes equivalency, *In re Fount* 213 USPQ 532 (CCPA 1982); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *Graver Tank & Mfg. Co. Inc. v. Linde Air Products Co.* 85 USPQ 328 (USSC 1950).

With respect to **Claims 4,17**: Ahr teaches that elastic members 42 are curvilinear. (Col. 7, lines 56,57)

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With respect to **Claims 5,18**: Kozak teaches that the extensible waistband portions with openings 28 are formed from the backsheet 14 comprised of flexible thin polyethylene film.

('233, Col. 4, lines 66,67)

With respect to **Claim 6**: Ahr teaches that tape fasteners 44 are any of those well known in the art, which includes those comprised at least partly of elastic material. ('499, Col. 7, lines 58-60)

With respect to **Claims 9 and 10**: Ahr teaches that elastic members 42 are capable of being either adhesively bonded to chassis 15 at side edges 25 or ultrasonically bonded in the same manner. ('499, Col. 7, lines 8-12)

With respect to **Claim 11**: Ahr does not teach that fastening means 44 are bonded directly to side edges 25 of rear waist portion 32. Kozak teaches that fasteners 27,27a are secured to the corners 30,30a of said waistband ('233, Col. 6, lines 29-32) from which Examiner concludes that the fasteners are bonded in some conventional way. Please see the motivation to combine the teachings of Ahr and Kozak as stated with respect to Claim 1, as Examiner also considers the bonding of fasteners 27,27a directly to the corners 30,30a of the rear waistband portion an alternative to bonding said fasteners to said elastic members 42 as taught by Ahr.

With respect to **Claim 12**: Examiner concludes that elastic members 42 taught by Ahr also serve as carrier members as they provide an equivalent function to the carrier member set forth by applicant in the disclosure.

With respect to **Claims 13,20**: As can best be seen in Figs. 1-5, Ahr teaches that fastening means 44 is comprised of tabs.

With respect to **Claim 14**: Please see the rejections of Claims 1 and 12. The motivation to combine the teachings of Ahr and Kozak has been stated in Claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

